

REMARKS/ARGUMENTS

Claims 1-3, 15-22, 24-26, 29, 39-58, 61, 62, 75, 76, 79, 80, 83, 84, and 87-116 are now pending in this application. Claims 1, 15, 39, 53 and 99 are independent claims. Claims 53 and 99 are amended. Claims 1, 2, 15-16, 18-21, 26, 29, 39-45, 47, 48, 51, 52, 54-58, 61, 62, 75, 76, 79, 80, 83, 84, and 87-98 were previously presented. Claims 4-14, 23, 27-28, 30-38, 59-60, 63-74, 77-78, 81-82, and 85-86 were cancelled without prejudice. Claims 100-116 have been added, however, there is no net gain of the number of claims, thus, no additional claims fees are necessary.

Claim Rejections – 35 USC § 103

Claims 1-2, 15, 18-19, 24-26, 29, 39-41, 45-47, 50, 53, 55-58, 61-62, 79-80, 83-84, and 87-99 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levinson, USPN: 4,923,704 (hereinafter: Levinson), in view of Wang and Tong, USPN: 6,463,844 (hereinafter: Wang). (Office Action, Page 3). Claims 3, 20-22, 42-44, and 54, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levinson, in view of Wang and further in view of Koochaki, USPN: 6,229,131 (hereinafter: Koochaki). (Office Action, Page 3). Claims 16-17 and 51-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levinson, in view of Wang and further in view of Barnes USPN: 6,608,292 (hereinafter: Barnes). (Office Action, Page 4). Claims 48-49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levinson, in view of Wang and further in view of Craft, USPN: 6,018,157 (hereinafter: Craft). (Office Action, Page 4). Claims 3, 20-22, 42-44, and 54, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levinson, in view of Wang and further in view of Thompson, USPN: 3,669,688 (hereinafter: Thompson). (Office Action, Page 5). Applicant respectfully traverses these rejections.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (emphasis added) (MPEP § 2143). “If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious.” (emphasis added) *In re Fine*, 837 F. 2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988).

Applicant respectfully submits that independent Claims 1, 15, 39, 53 and 99 include elements that have not been disclosed by any of the references cited by the Patent Office, either alone or in combination.

For example, independent Claims 1 and 15 of the present invention each generally recite, “a gelatinous ingredient that is not extracted from the food item being prepared . . .” Independent Claims 39, 53, and 99 of the present invention each generally recite, “a gelatinous ingredient for the food item, wherein the gelatinous ingredient is not extracted from the food item being prepared. . .” Neither Levinson or Wang disclose, teach, or suggest individually or in combination a gelatinous ingredient.

The Patent Office concedes that, “Levinson does not disclose a gelatinous ingredient for said food item positioned in the lower housing section, wherein said gelatinous ingredient is not extracted from the food item.” (Office Action, Page 3). The Patent Office asserts that “Wang discloses a gelatinous ingredient (21) for said food item positioned in the lower housing section (14), wherein said gelatinous ingredient is not extracted from the food item (col. 11, lines 32-37).” (Office Action, Page 3). However, Wang discloses, “a conventional flavoring agent dispersed or dissolved in water or cooking oil or provided in powder form,” which discloses a liquid with a dissolved flavoring or a powdered flavoring and does not make any referenced to a gelatin. (Wang, Col. 11, Lines 32-37). The above referenced claim element of a gelatinous ingredient includes a gelatinous

base and one or more additives 220.

A gelatinous ingredient is not a liquid or a powder. Terms of a claim carry "their ordinary meaning, unless it appears that the inventor used them differently." *Gargoyles Inc. v. United States* 28 USPQ 2d 1715, 1716-17 (Fed. Cir. 1993). Because Wang discloses only a liquid with a dissolved flavoring agent and/or a powdered flavoring agent, and does not disclose a gelatinous flavoring agent or ingredient as conceded by the Patent Office to be not included in Levinson, the liquid with a dissolved flavor agent and/or a powder flavoring agent cannot be equivalent to the gelatinous ingredient of the instant application.

Based on the rationale above, Applicant contends that none of the references cited by the Patent Office against the present invention, either alone or in combination, appear to disclose the above-referenced elements as claimed in Claims 1, 15, 39, 53 and 99 of the present application and therefore, the above-cited references do not preclude patentability of the present invention under 35 U.S.C. § 103(a). Applicant further contends that it would not have been obvious to one of ordinary skill in the art at the time of the present invention to combine or modify any of the above-cited references, either alone or in combination, to arrive at the present invention as claimed. As a result, a *prima facie* case of obviousness has not been established for independent Claims 1, 15, 39, 53 and 99. Thus, independent Claims 1, 15, 39, 53 and 99 are believed allowable. Further, Claims 2, 3, 89, and 93 (which depend from claim 1), Claims 16-22, 24-26, 29, 90, and 94 (which depend from claim 15), Claims 40-52, 61, 75, 79, 83, 87, 91, 95, 97, and 100-108 (which depend from claim 39), Claims 54-58, 62, 76, 80, 84, 88, 92, 96, and 98 (which depend from claim 53), and Claims 109-116 (which depend from claim 99) are therefore allowable.

Furthermore, applicant respectfully submits that dependent Claims 48 and 49 include elements that do not appear to have been disclosed by any of the references cited by the Patent Office, either alone or in combination.

For example, dependent claims 48 and 49 generally recite, "an inert gas,

said inert gas being added into said microwaveable housing, and said microwaveable housing being sealed with said food item, said gelatinous ingredient, said support member, said grill surface, and said inert gas therein." Neither Levinson, Wang, or Craft disclose, teach, or suggest individually or in combination an inert gas.

The Patent Office concedes that Levinson and Wang do not disclose an inert gas being added into said microwavable housing. (Office Action, Page 4). The Patent Office asserts that "Craft discloses an inert gas being added into said microwavable housing (col. 4, lines 10-18)." (Office Action, Page 4). However, Craft discloses, "glass tubes 50 of the upper heating unit 24. . . Each of the glass tubes 50 provides a tubular enclosure for retaining an inert gas 54 in an interior cavity." (Craft, Col. 3, Lines 62-67 and Col. 4, Line 1). The inert gas in Craft is located in the glass tubes of the claimed heating apparatus and is not located in a package or microwavable housing. (Craft, Col. 3, Lines 62-67 and Col. 4, Lines 1-18). Moreover, Craft does not disclose a package or microwavable housing. Further, Craft does not disclose a package or microwavable housing that may be sealed with a food item, gelatinous ingredient, support member, or grill surface. The above referenced claim element of an inert gas of the present invention is located inside of the sealed microwavable housing that is sealed with the said food item, gelatinous ingredient, support member, and grill surface therein. (Present Application, Page 17, Lines 23-25 and Page 18, Lines 1-11 and Page 29, Lines 15-22). Because Craft discloses an inert gas located in a heating medium and not an inert gas located in a package or microwavable housing, as conceded by the Patent Office to be not included in Wang or Levinson, the inert gas located in a heating apparatus with no microwavable housing cannot be equivalent to the inert gas of the instant application located in the sealed microwavable housing.

Further, "in order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method." *Rockwell Int'l Corp. v. United States*, 147 F. 3d 1358, 47 USPQ

2d1027, 1032 (Fed. Cir. 1998) (citing *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F. 3d 1461, 1471, 43 USPQ 2d 1481, 1489 (Fed. Cir. 1997). Therefore, “a reference published before a patent’s critical date is prior art only for that which the reference enables.” *F.B. Leopold Co. v. Roberts Filter Mfg. Co.*, Civ. App. 96-1218 (Fed. Cir. July 2, 1997) (unpublished) (citing *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 USPQ 2d 1301, 1304 (Fed. Cir. 1989). Craft enables only the method of filling a glass tube with an inert gas for and does not enable how to utilize an inert gas in a sealed microwavable housing.

Based on the rationale above, Applicant contends that none of the references cited by the Patent Office against the present invention, either alone or in combination, appear to disclose the above-referenced elements as claimed in Claims 48 and 49 of the present application and therefore, the above-cited references do not preclude patentability of the present invention under 35 U.S.C. § 103(a). Applicant further contends that it would not have been obvious to one of ordinary skill in the art at the time of the present invention to combine or modify any of the above-cited references, either alone or in combination, to arrive at the present invention as claimed. As a result, a *prima facie* case of obviousness has not been established for Claims 48 and 49. Thus, Claims 48 and 49 are believed allowable.

Additionally, Applicant respectfully submits that dependent Claims 75 and 76 include elements that do not appear to have been disclosed by any of the references cited by the Patent Office, either alone or in combination.

For example, dependent claims 75 and 76 generally recite, “said gelatinous ingredient comprises a corn syrup ingredient and an agar ingredient.” Neither Levinson, Wang, or Thompson disclose, teach, or suggest individually or in combination a gelatinous ingredient comprised of a corn syrup ingredient and an agar ingredient.

Patent Office concedes that Levinson and Wang do not disclose a

gelatinous ingredient comprised of a corn syrup ingredient and an agar ingredient. (Office Action, Page 5). The Patent Office asserts that "Thompson discloses gelatinous ingredient including a corn syrup ingredient and an agar ingredient (col. 1, lines 58-72 and col. 2, lines 1-20)." However, Thompson discloses:

"the present invention is accomplished by incorporating a novel stabilizing composition comprising a major amount of malto-dextrin and minor amounts of tapioca dextrin and gel-forming materials such as gelatin an agar agar into conventional high sugar solids glazes or icing for comestibles. It has now been discovered that such stabilizer compositions provide comestible glazes or icings having unusually high gloss coatings which will not flake or crack under extremes in ambient condition and which have a minimum tendency to weep or run."

(Thompson, Col. 1, Lines 58-69). In other words, Thompson discloses a high sugar glaze or icing that does not weep or run at ambient temperatures. (Thompson, Col. 1, Lines 58-69). The above referenced claim element of a gelatinous ingredient comprised of a corn syrup ingredient and an agar ingredient of the present invention is, "a gelatinous sauce or pad that produces steam 205 when heated. The steam 205 is applied or diffuses onto the food item 410 to add an additive 220, such as a flavoring, a coloring, an aroma, or a texture to the food item 410." (Present Application, Page 12, Lines 10-19). Because Thompson discloses an icing that does not run or weep at ambient temperatures, and does not disclose a gelatinous ingredient including agar and corn syrup that steams when heated to flavor, color, odorize, or texturize another food product as conceded by the Patent Office to be not included in Wang or Levinson, high sugar icing and glaze cannot be equivalent to the gelatinous ingredient including agar and corn syrup that flavors, colors odorizes, or texturizes with steam after heating.

Further, "in order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method." *Rockwell Int'l Corp. v. United States*, 147 F. 3d 1358, 47 USPQ 2d 1027, 1032

(Fed. Cir. 1998) (citing *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F. 3d 1461, 1471, 43 USPQ 2d 1481, 1489 (Fed. Cir. 1997). Therefore, "a reference published before a patent's critical date is prior art only for that which the reference enables." *F.B. Leopold Co. v. Roberts Filter Mfg. Co.*, Civ. App. 96-1218 (Fed. Cir. July 2, 1997) (unpublished) (citing *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 USPQ 2d 1301, 1304 (Fed. Cir. 1989). Thompson enables the method icing or glazing a comestible and does not teach how to steam a gelatinous ingredient containing agar and corn syrup to add flavor, color, odors, or textures with steam to a food product.

Based on the rationale above, Applicant contends that none of the references cited by the Patent Office against the present invention, either alone or in combination, appear to disclose the above-referenced elements as claimed in Claims 75 and 76 of the present application and therefore, the above-cited references do not preclude patentability of the present invention under 35 U.S.C. § 103(a). Applicant further contends that it would not have been obvious to one of ordinary skill in the art at the time of the present invention to combine or modify any of the above-cited references, either alone or in combination, to arrive at the present invention as claimed. As a result, a *prima facie* case of obviousness has not been established for Claims 75 and 76. Thus, Claims 75 and 76 are believed allowable.

Additionally, as the Examiner is well aware, Applicant is required to seasonably challenge statements by the Examiner that are not supported on the record, and failure to do so will be construed as an admission by Applicant that the statement is true. M.P.E.P. §2144.03. Therefore, in accordance with Applicant's duty to seasonably challenge such unsupported statements, the Examiner is hereby requested to cite a reference supporting the position that it would have been obvious to utilize a metal baking pan not viable in a microwave disclosed in Wang (Wang, Col. 11, Lines 20-25) with the metal microwave steam cooking kit disclosed in Levinson (Levinson, Title and Abstract) to form a


microwavable apparatus comprised of polypropylene, polyester, polystyrene (essentially forms of plastic), and other suitable materials that is disposable to grill food products in a microwave in accordance with the claimed invention (Present Application, Page 1, Lines 5-7 and Page 7, lines 19-24). If the Examiner is unable to provide such a reference, and is relying on facts based on personal knowledge, Applicant hereby requests that such facts be set forth in an affidavit from the Examiner under 37 C.F.R. 1.104(d)(2). Absent substantiation by the Examiner, it is respectfully requested that the rejection under 35 U.S.C. § 103 be withdrawn.

Moreover, all arguments made in previous responses to Office Actions traversing a 35 U.S.C. § 103(a) rejection by relying on Wang, Levinson, Koochaki, Barnes, Craft, and/or Thompson are reasserted herein.

CONCLUSION

In light of the forgoing, reconsideration and allowance of the pending claims is earnestly solicited.

Respectfully submitted on behalf of
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